

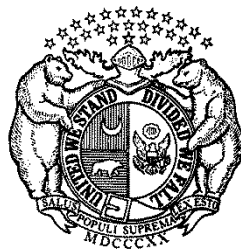
**MISSOURI
SENTENCING &
CORRECTIONS
OVERSIGHT
COMMISSION**

**2014
ANNUAL
REPORT**

Sentencing & Corrections Oversight Commission

Annual Report

Implementation of the Justice Reinvestment Act of 2012



Submitted Pursuant to Section 217.147, RSMo

December 31, 2014

Prepared by:

Eric Jennings

MISSOURI SENTENCING AND CORRECTIONS OVERSIGHT COMMISSION MEMBERSHIP

Hon. Bob Dixon, Co-Chair

State Senator (District 30)

Missouri Senate

*Chair, Committee on Judiciary and Civil and
Criminal Jurisprudence*

Hon. Marsha Haefner, Co-Chair

State Representative (District 95)

Missouri House of Representatives

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** Designee

December 31, 2014

The Honorable Jeremiah W. Nixon
Governor of Missouri
State Capitol, Room 216
Jefferson City, MO 65101

The Honorable Tom Dempsey
Missouri Senate
President Pro Tempore
State Capitol, Room 326
Jefferson City, MO 65101

The Honorable Timothy Jones
Missouri House of Representatives
Speaker
State Capitol Room 308
Jefferson City, MO 65101

The Honorable Mary Rhodes Russell
Supreme Court of Missouri
Chief Justice
Jefferson City, MO 65101

Dear Governor, Mr. President, Mr. Speaker, and Madam Chief Justice:

Pursuant to Section 217.147, RSMo, the Sentencing & Corrections Oversight Commission presents this annual report. The Commission conducted two meetings in 2014 to review information and compile its report: November 6 and December 30.

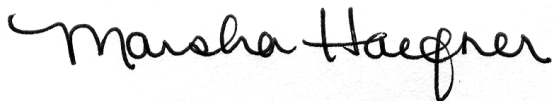
The Commission wishes to express its gratitude to the staff of participating agencies and organizations for their hard work and contributions to work product of the Commission.

Enclosed is our report and recommendations.

Sincerely,



Senator Bob Dixon, Co-Chair



Representative Marsha Haefner, Co-Chair

INTRODUCTION

This report constitutes the second Annual Report of the Missouri Sentencing and Corrections Oversight Commission, which is submitted in compliance with the statutory charge of the Commission (217.147, RSMo). As required by statute, the report details the effects of the Justice Reinvestment Act and provides the data and analysis demonstrating those effects. Although this is the second report submitted by the commission, the pages to follow provide background information on the Justice Reinvestment Act and activity since the act became law.

In the general sense, justice reinvestment refers to a concept and approach to corrections policy being adopted in an increasing number of states, including Missouri. Its key features are the use of data-driven reforms to reduce corrections spending and reinvest the savings in evidence-based practices to further reduce recidivism and prevent crime. The National Conference of State Legislatures maintains a webpage detailing states' justice reinvestment initiatives and related assistance.¹ Other entities involved in justice reinvestment initiatives nationwide include the Public Safety Performance Project of the Pew Center on the States², the Justice Reinvestment Program, a project of the Council of State Governments Justice Center³, and the Justice Reinvestment Initiative (JRI) of the Bureau of Justice Assistance in the U.S. Department of Justice⁴.

¹ Alison Lawrence, "Justice Reinvestment / State Resources," September 23, 2014, <<http://www.ncsl.org/research/civil-and-criminal-justice/justicereinvestment.aspx>> (30 December 2014).

² The Pew Charitable Trusts, "Public Safety Performance Project," n.d., <<http://www.pewtrusts.org/en/projects/public-safety-performance-project>> (30 December 2014).

³ The Council of State Governments Justice Center, "Justice Reinvestment," n.d., <<http://csgjusticecenter.org/jr>> (30 December 2014).

⁴ U.S. Department of Justice, Bureau of Justice Assistance, "Justice Reinvestment Initiative," n.d., <<https://www.bja.gov/programs/justicereinvestment/index.html>> (30 December 2014).

JUSTICE REINVESTMENT IN MISSOURI: BACKGROUND AND RELATED LEGISLATIVE ACTIVITY

Between 1990 and 2005, Missouri's prison population doubled, growing from 14,074 to 30,446. The increase during the last decade has not been as steep, with the state's institutional population standing at 32,008 in October 2014. Missouri's experience with increasing offender population and corresponding state corrections spending is not unique among the states. Therefore, in 2011, Missouri joined the ranks of states taking a fresh look at their corrections systems, explore policies like justice reinvestment, and develop new strategies to reduce recidivism, improve public safety, and lower the burden on taxpayers. In a bipartisan, interbranch collaboration, Governor Nixon, Chief Justice Price, Senate President Pro Tem Mayer, House Speaker Tilly, and Attorney General Koster announced the formation of a Missouri Working Group on Sentencing and Corrections.

MISSOURI WORKING GROUP ON SENTENCING AND CORRECTIONS

The Missouri Working Group on Sentencing and Corrections, composed of members representing the legislative, executive and judicial branches, as well as other interested stakeholders, met regularly during 2011. As part of the Justice Reinvestment Initiative, the Public Safety Performance Project of the Pew Center on the States and the U.S. Department of Justice provided technical assistance to review national trends and evidence-based practices and analyze data related to Missouri's corrections system.

On the basis of its review, the Working Group issues a consensus report on December 13, 2011, outlining the following policy recommendations:

STRENGTHEN COMMUNITY SUPERVISION AND REDUCE REVOCATIONS IN PRISON

- **EARNED DISCHARGE FROM PROBATION AND PAROLE**—Incentivize offenders who comply with the conditions of supervision by awarding a credit that reduces the term of supervision by 30 days for every 30 days of compliance
- **ADMINISTRATIVE JAIL SANCTIONS**—Grant probation and parole officers the authority to utilize short jail stays as a sanction for violations of supervision.
- **CAP ON REVOCATION TIME**—Require that probationers be placed in one of the Department of Corrections' 120-day or alternative programs (shock incarceration or drug treatment) on their first revocation for a technical violation.

ENSURE QUALITY IMPLEMENTATION, SUSTAINABILITY AND ONGOING OVERSIGHT

- **OVERSIGHT BODY**—Statutorily create a formal oversight body to monitor implementation of the reforms, evaluate outcomes, and certify savings.
 - **VICTIM RESTITUTION**—Ensure the criminal justice system holds offenders accountable for victim restitution and policymakers address the concerns of crime victims and survivors.
 - **MISSOURI'S CRIMINAL CODE**—Revisit Missouri's Criminal Code, which has grown too large and inconsistent.
-

HOUSE BILL 1525 (2012)

The policy recommendations developed by the Working Group were incorporated into companion legislation, Senate Bill 699 and House Bill 1525, known as the Justice Reinvestment Act. Senator Jack Goodman and Representative Gary Fuhr, both members of the Working Group, introduced the Justice Reinvestment Act in the General Assembly during the 2012 Regular Session. The General Assembly ultimately approved House Bill 1525 with bipartisan support. Governor Nixon signed the bill into law on July 6, 2012, and its provisions became effective on August 28, 2012.

IMPLEMENTATION OF JUSTICE REINVESTMENT

SENTENCING AND CORRECTIONS OVERSIGHT COMMISSION

MO. REV. STAT. § 217.147

In addition to its substantive components, the Justice Reinvestment Act also created this body, a thirteen-member Commission, to oversee the implementation of the legislation, to calculate its effects, to determine ways to reinvest any cost savings realized from the legislation in evidence-based practices that will further reduce recidivism, and to examine how restitution is collected for crime victims in Missouri. Under the terms of its enabling statute, the Commission will expire on August 28, 2018.

The Commission organized in 2013, with Senator Bob Dixon (R-Springfield) and Representative Marsha Haefner (R-St. Louis) serving as co-chairs. During 2013, the Commission operated with eleven members, representatives for the Missouri Sheriffs' Association and the Missouri Association of Counties not having been nominated by the governor or confirmed by the Missouri Senate. In 2014, a twelfth member was added, with the nomination (4/1/2014) and confirmation (5/1/2014) of Hon. Ed Wildberger, Buchanan County Recorder of Deeds, as the representative for the Missouri Association of Counties. To date, the position of representative for the Missouri Sheriffs' Association remains vacant. Another member, Senator Jolie Justus (D-Kansas City) will depart the legislature as a result of term limits. She will be replaced by the new ranking minority member of the Senate Committee on Judiciary and Civil and Criminal Jurisprudence, when committees are reorganized in January 2015, at the onset of the First Regular Session of the 98th General Assembly.

In 2013, the Commission conducted three meetings on September 10, November 8, and December 9, and issued its annual report. The Commission authorized the formation of a subcommittee to explore the concept of conversion of court costs and restitution into civil action and other best practices related to restitution and court costs. In 2014, the Commission held a joint meeting on September 9 with the legislative Joint Committee on the Justice System to receive updates from the Department of Corrections and its Division of Probation and Parole on Justice Reinvestment Act implementation. A second hearing was conducted on December 30, and the Commission issued this document, its second annual report.

The Commission would note several developments since the enactment of the original Justice Reinvestment Act in 2012. In 2014, the General Assembly approved, and Governor Nixon signed into law, Senate 621, which established a Joint Committee on the Justice System (JCJS). Among other justice system-related duties, the JCJS has the statutory responsibility to review and monitor the state's criminal laws, law enforcement, and public safety, as well as the state's correctional institutions and penal and corrections issues. The ability of the JCJS to assume oversight responsibilities with respect to the state's correctional system eliminates the need for the current Joint Committee on Corrections (JCC), which was repealed in other legislation approved during the 2014 Regular Session, Senate Bill 575. Ultimately, Senate Bill 575 was vetoed by the governor for reasons unrelated to the JCC. A measure to repeal the JCC has already been re-introduced for the 2015 Regular Session, as Senate Bill 58.

EARNED COMPLIANCE CREDIT

MO. REV. STAT. § 217.703

The Earned Compliance Credit (ECC) was designed to serve as an incentive for offenders to comply with the condition of their supervision. Research revealed that failures on supervision in Missouri most often occurred early in the supervision cycle, with 83% of probation revocations and 98% of parole revocations occurring within the first twenty-four months of supervision.

Under the JRA, the Division of Probation and Parole must award ECC to offenders placed on probation, parole, or conditional release beginning October 1, 2012. The credits are equal to thirty days of time served for every calendar month the offender remains in compliance with the terms of probation, parole, or conditional release. The credits reduce the duration of the term, but may be suspended or rescinded if the offender violates probation or parole. The offender must serve at least two years of the sentence on probation, parole, or conditional release. Only certain offenders of Class C and D felonies or drug crimes who are not on lifetime supervision may earn the credits. In addition, the court may limit eligibility for offenders of certain felonies. Finally, an offender deemed to be an absconder, as defined in the JRA, cannot earn credits.

Implementation of the Earned Compliance Credit proved challenging for the Department of Corrections and its partners in the justice system. The new provision applied to all offenders under supervision at the time of the statute change. Initially, department staff were required to perform hand calculations in order to determine the monthly credit. After a period of three months, technology modifications were developed to address the issue, with further modifications and enhancements being implemented by the end of Fiscal Year 2013 (FY13). An automated process has been designed to accurately calculate ECC credit for the Department of Corrections, state courts, and prosecuting attorneys.

IMPACT OF ECC ON FIELD POPULATION

Since the implementation of the ECC, the total field population supervised by the Division of Probation and Parole (P&P) has been reduced by approximately 9,811, from 73,673 in August 2012 to 63,862 at the end of October 2014. The caseload has decreased, but according to the Department of Corrections, citing an agency time study, the workload of P&P remains above capacity. The reduced field caseload has continued to help staff meet critical statutory and policy requirements, but it has not resulted in any actual savings.

Although a large reduction in the caseload numbers might prompt the concerns about public safety, the recidivism of the offenders discharged early is low. By offering an incentive for offenders to do well in order to receive a shorter term, the ECC also allows probation and parole officers to focus their attention on those high risk offenders who might pose a threat to public safety. Of the 12,406 ECC discharges who have been discharged for a year or more, only 167 have returned with a new conviction (*see* Table 1).

Table 1. Recidivism of ECC Discharges – Released at least 12 Months

	DISCHARGES	NEW SENTENCE	PERCENT WITH NEW SENTENCE
Probation ECC Discharges	9,089	89	1.0%
Parole ECC Discharges	3,317	78	2.4%
TOTAL ECC DISCHARGES	12,406	167	1.3%

SOURCE: Department of Corrections

COURT ORDERED DETENTION SANCTION

MO. REV. STAT. §§ 559.036-559.115

The Court Ordered Detention Sanction (CODS) mandates placement in a 120-day program for some technical violators. It was designed to preserve prison space for violent and chronic offenders, while ensuring a proportional, consistent approach to technical violations.

Under the JRA, upon a determination by the court that an offender has violated a condition of probation and if continuation, modification, enlargement or extension is not appropriate, the court shall order placement of the offender in one of the department's 120-day programs before revoking the offender's probation. Offenders are eligible for placement in one of these alternative programs only if certain conditions are met:

- The offender is on probation or parole for a class C or D felony offense or a drug offense;
- The probation violation is not the result of the offender being an absconder or convicted or arrested for any felony, misdemeanor, or infraction;
- The offender has not violated certain enumerated conditions of probation; and
- The offender has not been placed in a 120-day program during the same sentence.

The court has discretion to limit eligibility for offenders who committed certain enumerated class C or D felonies.

Upon receiving the order from the court for placement, the department must conduct an assessment and place the offender in the appropriate 120-day program, including shock incarceration or institutional treatment. Once the offender has completed the program, the court must release the offender to continue to serve the term of probation without modifying, enlarging, or extending the term based on the same violation. Time served in the program must be credited as time served against the offender's sentence.

Implementation of the CODS required significant changes to DOC procedures and processes in advance of the August 28, 2012, effective date. Courts, prosecutors, and public defenders were also required to incorporate this new element into existing practices related to sentencing and plea bargains.

HOUSE BILL 215 (2013)

During the 2013 Regular Session, statutory modifications to the Department of Corrections' 120-day programs were enacted in House Bill 215, and signed into law.

One of the modifications allowed for greater flexibility in sentencing. Originally, a court was required to place certain defendants who had violated the terms of probation in a DOC 120-day program before revoking probation. The amendment provided that a court may revoke the defendant's probation without placing the defendant in a 120-day program if the defendant consents to the revocation.

In addition, House Bill 215 made the following statutory changes:

- Repealed a provision requiring a circuit court to release an offender who participated in a 120-day DOC program unless the release constituted an abuse of discretion;
- Required that an offender's sentence may only be executed after conducting a hearing on the matter within 90 to 120 days from the date the offender was delivered to the Department of Corrections rather than within 90 to 120 days from the date the offender was sentenced;
- Modified provisions of law dealing with the DOC's responsibilities when an offender is not successful in a 120-day program;

- Required that the court must consider other authorized dispositions if the court is advised that an offender is not eligible for placement in a 120-day program;
- Required that the DOC must provide a report and sentencing recommendation to the court when an offender completes a sexual offender assessment;
- Specified that a sexual offender assessment shall not be considered a 120-day program and identified the provisions containing the process for granting probation to an offender who has completed the assessment; and
- Repealed a provision requiring the court to request certain offenders be placed in the sexual offender assessment unit of the Department of Corrections.

The JRA provided that an offender's first incarceration for 120 days in a DOC program prior to release on probation will not be considered a previous prison commitment for purposes of sentencing for subsequent crimes. House Bill 215 provided that an offender's first incarceration prior to release on probation—even if the offender did not participate in a 120-day program—will not be considered a previous prison commitment.

IMPACT OF CODS ON INSTITUTIONAL POPULATION

The CODS statute mandates a 120-day sentence if the offender is on probation for an eligible offense and has not been arrested for a new offense or absconded while on supervision. The reduction in time served as a result of CODS is noted in Table 2. The calculation is based upon probation revocations released in Fiscal Year 2012 (FY12) that met the offense and supervision conditions prior to revocation. If offenders had been revoked and served a term sentence, the estimate of time served is 13.2 months. In contrast, time served in CODS was 4.0 months.

TABLE 2. Reduction in Time Served by CODS (in months)

Time served by offenders who would have been CODS-eligible but were released in FY12	13.2
Time served in CODS	4.0
Reduction in time served	9.2

SOURCE: Missouri Department of Corrections

The reduction in time served as a result of CODS cases had favorably impacted prison population. However, according to the Department of Corrections, savings through the use of this alternative to revocation have been off-set by a continued increased in other sentencing. Since the enactment of the JRA in 2012, the institutional population has increased by 798, largely as a result of new sentencing (*see* Table 3).

TABLE 3. Increase in Institutional Population

August 28, 2012	31,210
June 30, 2013	31,435
June 30, 2014	31,905
October 31, 2014	32,008
Increase in population (2012-2014)	798

SOURCE: Department of Corrections

Data demonstrates no increase in recidivism by offenders continuing their probation after CODS, when compared with the recidivism rates for similar offenders who have been released from serving term sentences.

Table 4 (below) shows totals by fiscal year of Court Ordered Detention Sanctions (CODS) 120-day sentences and Earned Compliance Credit (ECC) discharges since the Justice Reinvestment Act became law.

TABLE 4. CODS and ECC Discharges since Enactment of JRA

	CODS	ECC Discharges
FY13	489	9,889
FY14	842	14,055
FY15	297	4,309
TOTAL	1,628	28,253

SOURCE: Missouri Department of Corrections

TABLE 5.

	CODS*	Projected Savings	ECC Discharges (est.)	Projected Savings**
FY13	70	\$225,300	396	\$183,357
FY14	154	\$495,660	527	\$244,476
	180	\$579,343	1,465	\$679,101
Y15				

*Time reductions equivalent to full-time prison beds

** \$1.27 per offender per day

SOURCE: Joint Committee on Legislative Research, Oversight Division; Department of Corrections

ADMINISTRATIVE JAIL SANCTION

MO. REV. STAT. § 217.718

The JRA authorized administrative jail sanctions (AJS or “quick dips”) as an alternative to revocation proceedings and incarceration for those offenders who have committee technical violations. They were designed to be a new tool to address offender non-compliance. As an immediate, certain and proportional response, they are intended to focus offender attention on compliance and successful completion of probation.

A probation or parole officer may order an offender to submit to a period of detention in the county jail, or other appropriate institution, upon a determination by a probation or parole officer that the offender has violated a condition of continued probation or parole, unless the court has otherwise required detention to be a condition of probation. The first period of detention may not exceed forty-eight (48) hours, but subsequent periods may exceed forty-eight hours. However, the total number of hours an offender spends in detention cannot exceed 360 hours in any calendar year. The officer must present the offender with a report detailing the violation and advise the offender of the right to a hearing before the court or board prior to the period of detention. To the extent feasible, the officer must impose the period of detention during days and times when the offender is not otherwise scheduled to work. Once released from the period of detention, the offender can continue the probation or parole term unless new or additional information is brought forward that the offender was involved in the commission of a crime. If the offender fails to complete the period of detention, he or she may be arrested.

The Division of Probation and Parole (P&P) shall reimburse the county jail or other institution for the costs of detention at a rate determined by the Department of Corrections, which shall be at least thirty dollars (\$30) per day per offender, subject to appropriations of funds by the General Assembly. Prior to ordering the offender to submit to the period of detention, the probation and parole officer shall certify to the county jail or institution that the division has sufficient funds to provide reimbursement for the costs of the period of detention. If there is not enough funding to cover the reimbursement or if there is inadequate space in the facility for the offender, a jail or other institution may refuse to accept offenders for detention.

IMPLEMENTATION OF AJS PILOT PROGRAM

The AJS program was projected to start as a pilot in the first year (FY13) with an expanded pilot in year two (FY14) and full implementation in year three (FY15). Delays in securing local partners have impacted the implementation of the administrative jail sanctions (AJS). Actual appropriations have also diverged from the funding expectations associated with the JRA when it was enacted.

The initial cost of the AJS pilot program was estimated to be \$240,000. FY14 would expand the amount of the pilot to \$500,000 and full implementation cost would be \$1,100,000 in FY 15. The full implementation cost figure was based on calculations that approximately 2,500 offenders would be eligible for this measure at \$30 per day and 15 days per year. Since passage of the JRA, the General Assembly has appropriated Justice Reinvestment funding in each fiscal year to implement the AJS provisions, but not in amounts equivalent to the original cost figures (*see* Table 5).

TABLE 5. STATE APPROPRIATIONS FOR JUSTICE REINVESTMENT PROGRAM

	COST FIGURES (2012 est.)	GOVERNOR'S RECOMMENDATION	APPROPRIATION	EXPENDITURE
FY13	\$240,00	—	\$100,000	\$0
FY14	\$500,000	\$100,000	\$100,000	\$0
FY15	\$1,100,000	\$100,000	\$100,000	— **
FY16		\$100,000*	—	—

*FY 2016 DOC Department Request

**Expenditure restriction

SOURCE: Office of Administration, Division of Budget and Planning; Senate Appropriations; House Appropriations

In February 2013, P&P worked with the Office of State Courts Administrator (OSCA) to identify potential jails as pilot sites for the use of AJS. AJS would be applied to clients who were drug court participants. Five counties in four circuits were identified as likely candidates: Boone (13th Judicial Circuit); Greene (31st Circuit); St. Louis City (22nd Circuit); and Franklin, Osage and Gasconade (20th Circuit). Two factors contributed to the limited number of counties identified: the pilot nature of the program and the initial amount of appropriations designated in the DOC budget for the initiative. The funding would be utilized to reimburse the county jails for the cost of the jail sanction (up to 48 hours at the rate of \$30 per day). It was anticipated that the \$30 per day rate, which is higher than the current reimbursement rate of \$20.58 per day, would act as an incentive for counties to participate in the program.

According to the DOC, the following items are necessary preconditions for P&P to enter into partnerships with the designated jurisdictions:

- The creation of a Memorandum of Understanding (MOU) spelling out the roles and responsibilities for each partner;
- The requirement in the MOU that state offenders be housed in Prison Rape Elimination Act (PREA) compliant facilities; and
- A commitment from the county sheriff to provide jail space for participating clients.

PREA was passed by Congress in 2003, with the purpose to “provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape.” On June 20, 2012, the U.S Department of Justice published the finalized Prison Rape Elimination Act of 2003 (PREA) standards addressing the prevention, detection and response to offender sexual abuse. With the publication of the standards, the State of Missouri had until August 2013 to reach full compliance.⁵

In March, April and May of 2013, Probation and Parole conducted site visits in Boone County, Green County and St. Louis City. P&P did not reach agreements with Greene County and Boone County, both of whom declined to participate, citing potential unfunded mandates and issues with the offering of a hearing prior to the sanction being imposed. St. Louis City chose to participate in the initiative, albeit in low numbers. After approximately eight months, an MOU was finalized, which became effective in February 2014. At the end of 2013, Jackson County and the KC NOVA project, which provide services to offenders who are high risk clients on probation, expressed an interest in participating in the AJS pilot program. The Division of Probation and Parole supported this request and an MOU was finalized with Jackson County in March 2014.

As a result of the administrative difficulties outlined above, including the issues with jails concerning the PREA requirements, the Division of Probation and Parole had not expended Justice Reinvestment funds for the administrative jail sanctions in FY13 or FY14. The FY15 budget was approved by the General Assembly on May 8, 2014, and signed by the governor (and vetoed in part) on June 24, 2014. Included in the appropriations was \$100,000 in funding for the Justice Reinvestment Program (the AJS pilot program). However, those funds were later included in expenditures restrictions (“withholds”) made by Governor Nixon. St. Louis City was notified about the expenditure restrictions in July 2014. Since the MOU with the city was signed, no clients have been selected for AJS in the St. Louis City drug court program. However, based on the level of interest expressed in both Kansas City and St. Louis City for the program, P&P has expressed its intention to maintain the AJS project in Kansas City for a minimal number of clients, utilizing current appropriations to provide reimbursements, in order to develop additional information on the program. As FY15 funds permit, P&P will continue to monitor this program for a limited number of clients.

RESTITUTION FOR CRIME VICTIMS

MO. REV. STAT. §§ 559.100, 559.105, and 570.120

In order to ensure the criminal justice system holds offenders accountable for victim restitution and policymakers address the concerns of crime victims and survivors, the Working Group recommended in its Consensus Report that the General Assembly enact legislation that emphasizes the right to

⁵ For a summary of recent efforts to bring the Department of Corrections and its facilities into compliance with the PREA standards, see Missouri Department of Corrections, “2014 PREA Annual Report,” n.d., <http://doc.mo.gov/Documents/PREA/2013_PREA_Data.pdf> (30 December 2014).

restitution for crime victims and (1) formalizes and centralizes the responsibility to collect restitution for crime victims and (2) contains tools to allow prosecutors to collect restitution during and after discharge.

In addition its provisions relating to 120-day programs, House Bill 215 (2013) also modified Missouri's laws with respect to restitution for crime victims. The scope of the restitution law was expanded beyond a narrow range of offenses to apply to any person found guilty of an offense. The payment of restitution may be collected as a condition of parole or conditional release, or taken from the account of an inmate incarcerated by the Department of Corrections in an amount set by the court.

Responsibility to collect court-ordered restitution for crime victims is vested in the office of the prosecuting or circuit attorney. Prosecuting attorneys who take action to collect restitution may collect an administrative handling cost in the following amounts: \$25 for restitution of less than \$100; \$50 for restitution of less than \$250; and 10% of the total for restitution of \$250 or more, for a maximum of \$75. The proceeds are to be deposited by the county treasurer into an "Administrative Handling Cost Fund" to be expended by the prosecuting attorney for certain purposes.

THE REVISED CRIMINAL CODE: SENATE BILL 491 AND HOUSE BILL 1371

In its final recommendation, the Working Group expressed support for the revision of Missouri's Criminal Code, using as a starting point the recommendations of the Missouri Bar Criminal Law Committee, which include the redefinition and reclassification of controlled substances and reduce the crack-powder cocaine sentencing disparity. In its 2014 Annual Report, this Commission also recommended that the General Assembly enact legislation to update the Criminal Code at the earliest possible opportunity. The General Assembly addressed the sentencing disparity in 2012, as part of Senate Bill 628, a larger judiciary bill. The disparity, previously a 75-to-1 ratio, was lowered to approximately 19-to-1. The larger task of a Revised Criminal Code was substantially completed this year.

LEGISLATIVE PASSAGE OF THE REVISED CRIMINAL CODE

Work on the Revised Criminal Code was initiated in 2008 by a subcommittee of the Missouri Bar's Criminal Law Committee. The draft Criminal Code revision prepared by the subcommittee served as the foundation for subsequent legislative efforts. After three legislative sessions of progress, the Revised Criminal Code (Senate Bill 491) was approved by the General Assembly on April 24, 2014. Governor Nixon took no action on the bill, allowing it to become law pursuant to Article III, section 31. At the same time, the House companion bill was replaced with a supplemental Senate substitute, targeting thirty-two statutory sections for changes and incorporating suggestions provided by the administration. This "addendum" to the Revised Code was signed into law by the governor on July 9, 2014. To provide ample time for necessary revisions and implementation of the new Revised Code, its provisions will take effect on January 1, 2017.

SUMMARY OF THE REVISED CRIMINAL CODE

The Revised Criminal Code seeks to restore the status of Missouri's criminal law as a system of offenses, rather than a mere collection of criminal statutes, one that systematically organizes the substantive criminal law and reflects our current reality. The current Criminal Code is the product of

decade after decade of statutes enacted by the General Assembly, nearly all made on a piecemeal basis, with little attention to the effect of these changes on the structure, terminology or application of the Code.

As the result of a revision process involving compromise and consensus, the Revised Criminal Code is a composite document. It reflects nearly a decade of give-and-take, including several policy judgments made by a supermajority of the General Assembly, rather than being the product of individual effort or a single legal philosophy. During this process, the sponsors and drafters were guided by several general principles:

- To use clear, accessible language and uniform organization to make the Code easier to read and understand for practitioners, elected officials and citizens;
- To consolidate offenses, eliminating those statutes which are outdated, technologically obsolete, unused or underutilized;
- To classify offenses in such a manner that the penalties prescribed by statute are rational and proportionate to the harm involved or in comparison to other offenses; and
- To incorporate as many major criminal offenses as practicable within the Revised Criminal Code.

The updates in the Revised Criminal Code are numerous. It contained a number of grammatical changes, including:

- The universal replacement of the term “crime” with the term “offense”;
- Changes to the names of offenses;
- Replacing the term “person” with “defendant”; and
- Amendment of statutes to make them gender neutral.

Defined terms used regularly throughout the Revised Criminal Code have been collected together in the general definitions section of Chapter 556. The number of terms included in the general definitions section has increased from thirty-two to fifty, with the primary differences being the incorporation of definitions previously located elsewhere in the Code and updates to existing definitions. Those terms used in only one or a few sections within a particular chapter are defined where appropriate, while terms used throughout a single chapter are included in the definitions section at the beginning of the applicable chapter.

One of the most significant changes related to terms of imprisonment. While the current Criminal Code includes only four and three classes of felonies and misdemeanors, respectively, in the Revised Criminal Code, there are five classes of felonies and four classes of misdemeanors. Under the Revised Criminal Code, class A felonies remain punishable by a term of imprisonment of 10 to 30 years or life, and class B felonies by a term of 5 to 15 years. The terms of imprisonment for the remaining three classes of felonies are, as follows:

- 3 to 10 years for class C felonies;
- 1 day to 7 years for class D felonies (term for current class C felonies); and
- 1 day to 4 years for class E felonies (term for current class D felonies).

In order to close the “gap” between the authorized terms of imprisonment for the current class B and C felonies, a new category of class C felony has been created, and the current C and D felony categories have been reclassified as D and E felonies, respectively, with the same authorized terms of imprisonment.

In addition, the fine structure has been adjusted, with the maximum fines being increased to account for inflation. No fines are authorized currently on either class A or B felonies, with confinement being the sole punishment. The Revised Criminal Code maintains the current framework, but also

excludes the new class C felonies from the fine schedule. The maximum level of fines possible on class D and E felonies will now be \$10,000.

The Revised Criminal Code adds a fourth category of misdemeanor (class D). Class A, B, C, and D misdemeanors are punishable by maximum fines of \$2,000, \$1,000, \$750, and \$500, respectively. The maximum fine for infractions has been raised from \$200 to \$400.

With respect to the specific offense chapters of the Revised Criminal Code, a number of changes of were also made, some of which include:

- Consolidation of assault offenses, the repeal of numerous “designer” assault offenses, and the addition of new sentencing enhancements;
- Changes to the minimum value of property that serves as the threshold between misdemeanor and felony offenses involving stealing and property damage, which currently vary from offense to offense;
- The transfer of certain regulatory or reporting statutes out of the Revised Criminal Code;
- The transfer of certain provisions into the Revised Criminal Code or their inclusion in different chapters because they related more directly to the title or subject matter of a particular chapter; and
- Changes with respect to offense nomenclature and the various degrees of particular offenses.

JOINT COMMITTEE ON THE JUSTICE SYSTEM

The establishment of the Joint Committee on the Justice System was mentioned above, with respect to its statutory duties to review and monitor the state’s justice system. In addition to these broader duties, Senate Bill 621 also charged the JCJS with specific statutory duties relating to the Revised Criminal Code. A permanent subcommittee of the JCJS was established to periodically review the Revised Criminal Code. It will “conduct and supervise a continuing program of revision designed to maintain the cohesiveness, consistency, and effectiveness of the criminal laws of the state.” The JCJS also may select an Advisory Committee on the Missouri Criminal Code, composed of a representative of the Missouri Supreme Court, the Office of the Attorney General, and other individuals known to be interested in the improvement of the state’s criminal laws. Every ten years, the subcommittee shall present to the General Assembly “such criminal code revision bills as it finds appropriate to accomplish its purpose.”

COMMISSION FINDINGS AND RECOMMENDATIONS

SUMMARY OF JUSTICE REINVESTMENT IMPLEMENTATION

1. **SENTENCING AND CORRECTIONS OVERSIGHT COMMISSION.** Since the enactment of the JRA, the Commission has organized, conducted a limited number of meetings, and produced two annual reports, as required by statute. During its existence, the Commission has not operated with the full complement of members designated in statute.
2. **EARNED COMPLIANCE CREDITS.** ECC has been implemented, and its effect on the total field population supervised by the P&P is still being measured.
3. **COURT ORDERED DETENTION SANCTIONS.** CODS is being utilized, and the General Assembly has continued to refine its parameters through subsequent legislation. The reduction in time served as a result of CODS cases has favorably impacted institutional population, but the costs of continued institutional population growth appear to have outstripped the amount of any savings.
4. **ADMINISTRATIVE JAIL SANCTIONS.** Full implementation of the AJS program was projected to occur in FY15. Although the General Assembly has appropriated limited funds for the AJS program, those funds were not expended in FY13 or FY14, because pilot programs could not be established outside the metropolitan areas of St. Louis and Kansas City. Even in these two areas, implementation of pilot programs has been delayed by restrictions of appropriated funds.
5. **VICTIM RESTITUTION.** House Bill 215 (2013) expanded the scope of Missouri restitution laws, vested responsibility for the collection of court-ordered restitution for crime victims in prosecuting attorneys, and provided a wider array of tools to allow collection.
6. **REVISED CRIMINAL CODE.** With the passage of Senate Bill 491 (2014) and House Bill 1371 (2014), a Revised Criminal Code for the state of Missouri will take effect on January 1, 2017. This represents the first comprehensive revision of the criminal laws in four decades. At the same time, the General Assembly put in place a mechanism to provide for continuous revision of the Code.

RECOMMENDATIONS

- 1. GENERAL RECOMMENDATION #1:** Each component of the Justice Reinvestment Act must be fully implemented, and new tools developed and implemented.

In the current stage of JRA implementation, two of three main components (ECC and CODS) have been implemented. As noted in the Commission's 2013 Annual Report, the full impact of ECC and CODS remains unclear at this point. As their use becomes widespread and more cases are processed under the JRA, examination of their impact on the criminal justice system, correctional capacity and recidivism will be possible. Participants in each portion of the criminal justice system will have limited knowledge of how ECC and CODS are operating. Therefore, feedback and observations from the field regarding emerging practices—and challenges—must be collected and combined in order for policymakers to obtain a clear view of the utility of these JRA components. Formal mechanisms should be instituted to solicit this information on a regular basis from the judicial, prosecutorial, public defense, corrections and law enforcement community, as well as other criminal justice stakeholders. As participants in the field continue to face real-life scenarios in implementation, additional legislative revisions will undoubtedly prove necessary.

Implementation of the third component of the JRA—the AJS program—has been extremely limited, leaving the Commission with no empirical data with which to evaluate the program. Ultimately, the success of the AJS program depends on the availability of space at local confinement facilities and county participation in the program. Too many county jails in Missouri operate at, near, or over capacity. The state provides a reimbursement to counties for the cost of incarcerating state offenders in county jails. Missouri statutes authorize a rate of \$37.50 per day per prisoner. However, these state reimbursements are subject to legislative appropriation, rising to \$22 per offender per day in FY09 and dropping back to \$19.58 in FY11. For Fiscal Year 2015, the General Assembly approved an increase to county reimbursement levels which raised the per diem from \$19.58 to \$22.58. Of the total funds appropriated, \$5,269,656 was restricted, with \$1,756,552 of the expenditure restriction being released on September 12, 2014. In contrast, the per diem rate for housing federal prisoners is nearly three times the amount paid by the state. The actual cost to house an inmate ranges anywhere from approximately \$40 to \$60. For these reasons, the statutory reimbursement rate for AJS was \$30 per day per offender, in order to provide an incentive for counties to participate. This incentive may be insufficient to prompt participation, which, in light of the appropriations history for the regular statutory per diem, should not be surprising.

Finding a means to fully implement the AJS program requires thoughtful action, with respect to both appropriations at the state level and forging partnerships at the level of local government. The presence of representatives of the Missouri Association of Counties and the Missouri Sheriffs' Association on the Commission may well prove critical to understanding and eliminating barriers that currently exist to full implementation of the JRA.

While implementation of the current JRA remains the primary focus, it should not preclude consideration of additional justice reinvestment policy measures. For instance, Missouri provides an array of treatment courts in local jurisdictions.⁶ On several occasions, the General Assembly has considered legislation related to deferred prosecution or pretrial diversion programs. Many other states provide pretrial diversion alternatives.⁷ In FY14, the Missouri Office of State Courts Administrator received a grant from the State Justice Institute relating to pretrial and probation services assessment and

⁶ Office of State Courts Administrator, "Missouri Treatment Courts," n.d., <<http://www.courts.mo.gov/page.jsp?id=250>> (30 December 2014).

⁷ National Conference of State Legislatures, "Pretrial Diversion," June 10, 2013, <<http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-diversion.aspx>> (30 December 2014).

best practices, which would be utilized to create a pretrial and probation best practices manual for state judges.⁸

2. GENERAL RECOMMENDATION #2: Refinements must be made to data management systems and data collection practices, particularly cross-jurisdictional cooperation and information sharing.

In order to measure the impact of the JRA, now and in the future, the Commission and those to whom it reports must have empirical data. Plainly, in a data-driven process such as justice reinvestment, accurate, timely and complete data is critical. In order to assess the impact of enacted policies on jail and correctional populations, recidivism rates, or criminal activity, information must be readily accessible. As directed by statute, the Department of Corrections and the Office of State Courts Administrator have cooperated fully with requests for information from the Commission. However, in many instances, the data necessary to evaluate the impact of the JRA is not a part of current collection practices. Any examination of the full impact of the JRA on Missouri's criminal justice system will be incomplete without data across the full spectrum, from agency data to statewide jail data.

Initiatives are being pursued throughout state and local government to bring Missouri fully into the 21st Century. The judicial branch continues a statewide roll-out of its eFiling system, which allows registered users to file cases and documents electronically in participating courts.⁹ During 2015, 37 additional counties are scheduled to implement eFiling.¹⁰ At the same time, law enforcement has been working on several state-level information sharing and exchange projects.¹¹ In particular, a Statewide Jail Records Management System being explored by the Missouri Sheriffs' Association could be a critical component in measuring the impact of the JRA. Complete integration of these systems is not necessary, but it is essential that they be able to communicate and share information. As these entities move forward with their automation efforts, the executive, legislative and judicial branches should work closely with them to incorporate modifications into those systems to capture JRA data elements.

The development of a JRA "dashboard" would be quite beneficial for the evaluation and analysis phase. This dashboard of multiple indicators or JRA-related data elements could provide the Commission and other stakeholders, including policymakers, with the ability to track changes in various components of the criminal justice system in real time.

3. GENERAL RECOMMENDATION #3: Effective mechanisms must be developed and put in place to monitor savings and guide the reinvestment of funds into additional or expanded programming.

⁸ State Justice Institute, "Past Grant Awards," <http://sji.gov/PDF/SJI_Grant_Awards_FY_05-14_with_Award_Numbers.pdf> (30 December 2014).

⁹ Office of State Courts Administrator, "Missouri eFiling," n.d., <<https://www.courts.mo.gov/file.jsp?id=46922>> (30 December 2014); Office of State Courts Administrator, "The Missouri Electronic Filing System," n.d., <<https://www.courts.mo.gov/page.jsp?id=49113>> (30 December 2014).

¹⁰ Office of State Courts Administrator, "Missouri Electronic Filing Implementation Schedule," n.d., <<https://www.courts.mo.gov/page.jsp?id=46524>> (30 December 2014).

¹¹ Missouri Sheriffs Association, "Newsletter," October 2012,

<<http://www.mosheriffs.com/uploads/20121016/1395de7f8f006ce65c64b2e6e3ff990d.pdf>> (30 December 2014); IRG AI, "Missouri State Highway Patrol Detailed Design Specification OCN Query Application, Version 2.0," September 20, 2014,

<<http://www.wdmtoolkit.org/~media/Microsites/Files/Warrants%20and%20Dispositions/State%20Implementations/Missouri/OCN%20Detailed%20Design%20Document.ashx>> (30 December 2014); Department of Public Safety, "Missouri Law Enforcement Data Exchange (MoDEX)," n.d., <<http://www.dps.mo.gov/dir/programs/ohs/modex/?h=0>> (30 December 2014).

The essence of justice reinvestment is a sustainable feedback loop. The state of Missouri enacts data-driven reforms to reduce recidivism or the rate of individuals sent to prison for new crimes. By avoiding prison costs, the state generates savings. In turn, these savings can be invested in evidence-based practices to further reduce recidivism or prevent crime, without new funds being appropriated. The heart of a viable justice reinvestment process is an effective oversight mechanism—the means to monitor progress, certify annual savings, and guide the reinvestment of funds in new evidence-based practices or programming. For this reason, the Working Group recommended the creation of a statutorily-created formal oversight body: the Sentencing and Corrections Oversight Commission.

To endure as a long-term venture, the Justice Reinvestment Act requires engagement from all three branches of state government, involvement from local government, and an oversight body to facilitate communication and cooperation between the various stakeholders. Composition, continuity in membership, and the capacity to build institutional knowledge are important to any successful oversight body.

The Commission is simultaneously more and less expansive than its predecessor, the Working Group. Representatives from all three branches of government served on the Working Group, but neither local government nor law enforcement were formally represented. The statutory membership of the Commission does include representatives from both the Missouri Association of Counties and the Missouri Sheriffs' Association. However, it lacks anyone to represent the Attorney General's Office or a direct representative of the Governor's Office.

The oversight entity must also be a continuing body, with rotating membership that preserves and transmits institutional memory. During its first two years, six members of the Commission had previously served as members of the Working Group. However, neither of the co-chairs of the Commission were Working Group members. Entering 2015, none of the legislative members of the Commission will have served on the Working Group. Among the seven legislative members of the Working Group, only two are still serving in the General Assembly. Of the four legislative members, one will depart the legislature this year as a result of term limits. The remaining three legislators will all complete their service in 2018.

In order to properly exercise its duties, the Commission also needs staff with the expertise to conduct the necessary evaluation and analysis. Currently, the Commission utilizes the personal staff of members, particularly the co-chairs, research staff for the General Assembly, and assistance from the Department of Corrections and the Office of State Courts Administrator. The quality of this staff is unquestioned, but the fragmented nature of this arrangement, and the inevitable staff turnover with new co-chairs, detrimentally impacts the ability to the Commission to draw on specialized expertise. This gap might be partially addressed by drawing on technical assistance or grants from The Pew Center, the Bureau of Justice Assistance or other entities invested in nationwide efforts on justice reinvestment.

Finally, the focus of the Commission overlaps in large part with the subject matter jurisdiction of existing entities, such as the Joint Committee on the Justice System, the Joint Committee on Corrections, or the Criminal Records and Justice Information Advisory Committee, among others. This commonality should be considered, and steps taken to ensure close cooperation or eliminate duplication.

CONCLUSION

The Justice Reinvestment Act of 2012, representing the first step in this process, created additional tools and options, including statutory provisions, correctional practices, and shifts in authority and discretion. When new elements are introduced into any system, it takes time for participants to learn to use new tools, as well as capture and report information about their use. As criminal justice stakeholders utilize these tools, new practices will emerge. Feedback from practitioners in the field—judges, prosecutors, probation and parole officers, public defenders, defense attorneys, law enforcement, and other criminal justice partners—will inform additional steps taken by policymakers.

LEGISLATION

2012

HB 1525 – Justice Reinvestment Act

HB 2009 – Justice Reinvestment Program - Appropriates \$100,000 to the DOC for per diem payments to counties (at \$30/day) for housing state prisoners

2013

HB 215 – Criminal Justice Omnibus Bill – Permits a court to revoke probation without placing the defendant in a 120-day program, if the defendant consents to the revocation

HB 9 – Justice Reinvestment Program - Appropriates \$100,000 to the DOC for per diem payments to counties (at \$30/day) for housing state prisoners

2014

SB 491– Revised Criminal Code

HB 1371– Revised Criminal Code “Addendum”

HB 2009 – Justice Reinvestment Program - Appropriates \$100,000 to the DOC for per diem payments to counties (at \$30/day) for housing state prisoners